02-05 MEE 1 Example 1

1. Yes, as president, Presley, has the authority to retain an attorney to file suit against FS on behalf of Corp. General corporate governance rules give the president such authority since he is the officer chosen by the Board of Directors to merge the affairs of the corporation on a day-to-day basis. Precluding the president from retaining an attorney would mean that the Board must make the decision. Since the Board does not sit as a body on a continual basis, requiring the Board to retain counsel could potentially result in the loss of a right to sue because the statute of limitations could run prior to the Board convening or some other prejudice to the corporation could result. Here, Corp's right to recover the $11,000 in bankruptcy, assuming that occurs, could be prejudiced by the failure to immediately file suit by another entity obtaining priority. Although the general rule gives the president power to retain counsel, the bylaws could presumably remove this power from the president. The by laws of Corp do not do so. Instead, they apparently grant him the power by giving him the power to "manage the business of the corporation." Such authority would be an express implied authority based on the language of the bylaws.

2. No, Presley, as president, did not have the authority to declare a dividend payable to Corp's shareholders. The payment of dividends is a power that the law expressly reserves for the discretion of the board of directors. The rationale behind such a rule is straight forward. The payment of dividends is a substantial corporate decision because it is a choice between retaining earning and issuing dividends, a question as to where a better return on the money could be earned. Such a decision should be vested in the Board of Directors because they are subject to the shareholders removal. Thus, if they don't like the fact the Board issued or didn't issue dividends, they could exercise their vote to have the Board member removed. Shareholders, however, have no power to remove a president, except through changing Board members. Thus, such a substantial decision as to whether to issue dividends would be somewhat insulated from shareholder's power. The issuance of dividends is too important of a decision to remove from shareholder influence. Thus, Presley did not have the power to issue dividends under general corporate principles as such decision is vested in the Board's discretion. The bylaws of Corp. say nothing to alter this outcome.

3. No, Presley, as president, did not have the power to enter into the purchase agreement with Large Corp. The purchase of a manufacturing plant is too large a purchase, too substantial of a decision to be vested solely in the president's discretion. Presumably, the purchase of a manufacturing plant can only be made for a large sum of money. Thus, it has the potential to drastically affect the bottom line of Corp. The fact that Large Corp is willing to accept payment over 10 years does not make the decision any less substantial. In fact, the fact that it would impose an obligation on Corp. with a duration of 10 years makes Board approval all the more necessary. The rationale requiring Board approval is similar to that in the situation of dividends. A decision of this magnitude that could so substantially affect Corps existence and sets a definite course for the future should not be insulated from shareholder influence, the true owners of Corp. Instead it should be vested in the Board, who is subject to removal by the shareholders when bad decisions are made.

02-05 MEE 1 Example 2

Answer to question 1

1. Presly had the authority to file suit against FS on behalf of Corp. At issue are the duties and responsibilities of directors in carrying out the day-to-day operations of the corporation.

In Missouri, it is presumed that an officer, unless stated otherwise in the bylaws, will manage the day-to-day activities of a corporation. This is because directors of a corporation oversee the officers. An officer of a corporation serves at the whim of the board of directors. Here, an officer will be given the responsibility to manage the day-to-day affairs of the corporation, including going after defaulting buyers. Furthermore, Presley was vested with the power, as allowed by the bylaws to "manage the business of the corporation and other duties that the board of directors may from time to time direct." Therefore, Presley had the authority to file suit against FS on behalf of Corp.

2. Presley, as president, did not have the authority to declare a dividend payable to Corp's shareholders. At issue are the powers of an officer compared to the board of directors. In Missouri, only the board of directors has the ability to declare a dividend, unless otherwise stated in the Articles of Incorporation or the Bylaws. To properly declare a dividend, there must be a majority vote by the board of directors dictating the amount of the dividend to be paid, and the record date for shareholders to have held shares in order to receive the dividend.

Here, Presley, as an officer overstepped his bounds in declaring a dividend. An officer of a corporation is responsible only for the day-to-day management and operations of the corporation. Issues such as voting for officer pay, declaring dividends, approving debt, and whether or not to sell corporate assets are powers specifically for the board of directors. Furthermore, there were no powers granted by the board of directors in the corporation's bylaws vesting this specific power to Presley, as well as no mention in the articles of incorporation. Therefore, since Presley is only an officer and not a director, Presley cannot declare a dividend.

3. Presley does not have the power to bind Corp in a contract with Large. At issue is where the management decisions of an officer are subject to review and endorsement by the board of directors. An officer of a corporation does not have the ability to enter a corporation into large contracts and accumulate significant debt if doing so would be regarded as a fundamental change in the business. Here, Presley is acquiring a major manufacturing plant that has the ability to triple Corp's current production, and therefore expand Corp as a whole. Furthermore, Corp will be accumulating debt as a result of the purchase. If the increasing of Corp's capacity, as well as accumulating debt, exceeds the scope of Presley's management of the corporation, than Presley did not have the autority to enter into a purchase agreement with Large to acquire the plant. Furthermore, if the ten year payment plan is the equivalent of a mortgage, this would be debt, which cannot be incurred without the specific approval of the board of directors.

02-05 MEE 1 Example 3

1. Presley had the authority to sue FS on behalf of Corp. under MO Corporation law the officers of a company can handle the day to day operations of a corporation. This would include buying supplies, selling merchandise and collecting receivables. In this case Presley hired an attorney to collect for past due debts. This collection is well within the function of the president and within the scope of "manage the business of the corporation" as set forth in Corp's bylaws. Presley did have the authority to hire an attorney to sue for collection from FS.

2. Presley did not have the authority to declare a dividend. Under MO corporation law the power to declare a dividend rests with the Board of Directors (BOD) not the officers. In this case only the most liberal construction of Corp's bylaws would even hope to allow this function by the President. This is not generally considered the management of a business. However, the BOD can ratify such an action if they choose. That, notwithstanding, the declaration of dividends is not a function of officers and was not within Presley's authority.

3. Presley did not have the authority to enter into an agreement with Large for the purchase of the manufacturing plant. Under MO corporation law, officers may handle the day to day management of a business including purchases. However, extraordinary actions that change the nature of a corporation must be decided and agreed to by the BOD. In this case the size of the manufacturing facility is more than twice the size of Corps current business. This increase would dramatically change the corporation in terms of debt, income, employment, production, budget and overhead. These massive changes must be decided by the BOD. If Corp had hundreds of facilities and a new plant was very small in comparison to the total, the purchase would probably be fine. However in this case the result is too great to not be considered extraordinary. Therefore, Presley would not have the authority to enter into the purchase agreement.

02-05 MEE 2 Example 1

Some of Art's "defenses" partially or fully relieve him of liability; others do not. Each will be discussed below:

1)Whether the note is a valid negotiable instrument despite Kit's promise to paint Art's house.
The note here was a negotiable instrument. A negotiable instrument is a written, signed unconditional promise or order to pay a fixed sum, with no unauthorized promises, on a fixed date or on demand, to order or bearer at time of issue. The note here satisfies all of these requirements. It was written and signed by Art and Kit. The note, on its face, is unconditional. It is a promise to pay $5,000 on a fixed date (4/4/03). Finally, it was payable to order at the time of issue ("to pay to the order of Delear").

The fact that Kit and Art had a collateral contract about Art serving as the guarantor of the note is irrelevant. When Art signed as a co-maker of the note, he became a guarantor of the debt for Kit. If Art wanted to make his liability conditional on Kit's performance, he should have written a clause on the note that his liability was conditioned on Kit's performance. Such a clause could affect the negotiability of this note, but a clause like that is not present here.

2) Whether the Dealer had to try to collect from Kit first.

No, the Dealer had the right to choose between collecting from Art or collecting from Kit in this hypothetical. When a surety signs simply as a co-maker of a note, he is liable to the payee, and the payee can choose between collection from the guarantor or from the guarantee.

If Art wanted to force the Dealer to first try to collect from Kit, Art should have signed as a guarantor of payment or a guarantor of collectibility. A payee can only collect from a guarantor of payment after he has demanded payment from the guarantee and has been denied. A payee can only collect from a guarantor of collectibility if the payee cannot satisfy a judgment for the debt against the guarantee. However, because Art failed to sign as either a guarantor of payment or a guarantor of collectibility, the dealer can immediately move directly against him.

3) Whether Art was discharged when Dealer refused the tender of $2,000.

Art was partially discharged to the extent of $2,000 when the dealer refused the $2,000 tender. The creditor cannot alter the risks of a guarantor without the guarantor's consent. In this case, the creditor refused a tender of $2,000 from the guarantee (Kit). By refusing the tender on the due date of the note, the payee materially changed the guarantor's risks. As a result, the guarantor is discharged to the extent that his risks were changed. In this case, that means Art is partially discharge in the amount of $2,000.

4) Whether Art is discharged due to the extension of time given to Kit.

Art is probably fully discharged as a guarantor due to the extension of time granted by Dealer. If a creditor extends the due date for payment without the guarantor's consent, the guarantor is discharged to the extent that he suffers harm. The justification is that the creditor cannot change the risks to the guarantor without his consent.

In this case, it appears that Kit probably had the $5,000 on the day that the note was due. On the due date, Kit had $2,000 to pay Dealer. She also had enough money left over to finance a trip to the Far East. As a result, if the Dealer would have demanded money on the due date rather than grant the extension, he would have gotten most, if not all, of his money and would not need to collect from Art.

02-05 MEE 2 Example 2

(1) Whether Art will be relieved of liability depends in part on whether there was a valid negotiable instrument to begin with. The requirements for a negotiable instrument are a written, promise or order to pay, a fixed amount of money on demand or at a definite time; the promise must be unconditional; here must be no extraneous undertakings; the promise must be payable on demand or of a definite time and be payable to order or bearer. There, Art claims that the note was subject to the condition that Kit paint his house. However, the note contains no such limitation. That Kit agreed in a separate to paint Art's house within 90 days does not destroy negotiability. Art may assert that the consideration for the note failed, but this does not mean that the note fails to meet the requirements for a negotiable instrument. This defense will fail.

(2) Art also may not defend on the ground that the dealer must first attempt to collect from Kit. Art signed the note as an accommodation party when he co-signed the loan with Kit. The signature of an accommodation party makes Art jointly and severally liable on the note along with Kit. Because liability is joint and several, dealer may look either to Kit or to Art to collect on the promissory note. If Art had instead signed the note along with the phrase "collection guaranteed," dealer would then have to attempt to collect the amount due from Kit, before turning to Art. Under these facts, however, Art may not escape liability by asserting that dealer must first try and collect from Kit.

(3) Art does have a good argument that he was discharged when Dealer refused Kit's tender of $2,000. Under Article 3 of the Uniform Commercial Code, tender of payment for an item discharges the amount of payment so tendered if the payment is refused. Here, Kit offered Dealer a check for $2,000. When Dealer refused to accept tender of the check from Kit, Kit was discharged. Because an accommodation party may assert the defenses of the accommodation party, Art may assert Kit's attempt to tender payment and the subsequent refusal as his defense.

(4) When an accommodated party signs a promissory note, he is protected against actions by the holder of the note that might impair the value of collateral securing a note. He is also protected against extensions given for payment of the note to the extent such extensions result in harm to the accommodation party.

Here, Art signed as an accommodation party a note that was payable on November 4, 2003. Without consulting Art, Dealer extended the entire loan until Jan. 2, 2004. This extension caused Art harm because Kit was poised to pay $2,000 that day, but because of Dealer's actions, Kit paid nothing. Thus, Art was definitely harmed monetarily in the amount of $2,000 based upon Dealers extension of the loan and Art will be excused from the payment of the $2,000. If Art can prove that not for the extension, Kit would have paid the entire balance, Art may not have to pay any of the amount due to Dealer.

02-05 MEE 2 Example 3

Answer to question 2

Art has defenses that will relive him of some of the obligation.

This case deals with Commercial Transactions. Commercial transactions are governed under Article 3 of the UCC.

(1)

The issue in this question deals with negotiability. To be negotiable the item has to satisfy the following elements:

a. Signed Writing by the party to be charged.
b. Unconditional
c. Payment of a fixed amount of money
d. Promise or Order
e. Order or Bearer paper
f. For a fixed amount of time

The note in question satisfies the above elements as it was signed by Kit and Art, unconditional on its face, payment of $5,000. The note was order payable due on November 4, 2003. Thus, the note is a negotiable instrument governed by Article 3.

In this case Art argues the element that the note was not unconditional. The note that is in question was unconditional. Art mistakenly referred to the separate agreement to paint the house. This is a separate note and is not included with the note to the bank. The note to the bank meets the above reqiurements, therefore it is negotiable. The separate agreement would not be a negotiable instrument becuase it was not unconditional.

(2)

In this case, Art is an accomodating party or co-signer on the loan. He meets the requirements becuase he signed his name to the note. When a loan is denoted "Collection Guaranteed", a creditor must first sue the non-accomodating debtor. Under such method, if the creditor is unable to collect on the judgment, he can come after the accomodating party. In this case, there was not a denotation of "collection guaranteed", therefore Dealer did not have to try first to recover from Kit. Thus, Art is mistaken in his belief that Dealer must first try to collect from Kit.

(3)

As a result of dealer turning down the $2,000 check, Art was discharged for his responsibility under the note. Whenever a creditor turns down payment that is due on the underlying obligation, he or she can no longer go after the accomodating party for payment. Thus, since Dealer turned down Kit's offer, Art has a valid defense.

(4)

As a result of dealer extending the time on the loan, Art was also discharged. Whenever a creditor extends payment on the note, he changes the deal. Thus, the creditor can no longer go after the accomodating party. In this case, Dealer extended the note by two months which is material in a one year loan. Thus, Dealear is prevented from going after Art.

02-05 MEE 3 Example 1

(1) The court should deny the motion to dismiss as to both claims. The issue is whether the court has subject matter jurisdiction based on diversity of citizenship since a federal question is not involved. Federal courts are courts of limited jurisdiction. In order for the court to have diversity jurisdiction, there must be complete diversity of citizenship between the parties, meaning no plaintiff can be a citizen of the same state as any defendant. Also, the amount in controversy must exceed $75,000. The relevant time for determining the citizenship of the parties is at the time the suit was filed. Citizenship of individuals is defined by residency plus an intent to remain indefinitely.

As to both claims, there was complete diversity of citizenship at the time the suit was filed. Buyer had settled into his apartment in State Y permanently by the time he filed suit. Seller had not yet moved to State Y when the suit was filed, and was still a citizen of State X.

As to the tort claim, there is no question regarding whether the amount in controversy is met. The amount in controversy is determined solely by plaintiff's prayer for relief. Here, the tort claim prays for $500,000 in damages, which clearly exceeds $75,000.

As to the contract claim, plaintiff is praying for $2,500, which is clearly below the $75,000 amount in controversy requirement. However, the federal court has discretion under the doctrine of supplemental jurisdiction or ancillary jurisdiction to hear the contract claim as well.

A federal court may use its discretion to exercise supplemental jurisdiction over a claim that does not meet the requirements of diversity jurisdiction if it involves the same transaction or occurrence or has a common nucleus of operative fact as a claim that does fall within its jurisdiction.

Here, the contract and tort claims both stem from the automobile accident. The claims involve a common nucleus of operative fact, in that if it is determined that seller knowingly sold the car to buyer with defective brakes, buyer will prevail on both claims. Therefore, the court should exercise discretion to exercise supplemental jurisdiction over the contract claim, and deny seller's motion to dismiss as to both claims.

(2) The court should deny seller's motion for change of venue to state Y. Venue is proper if brought in the forum state where any defendant resides, if all defendant s reside in the same state, or in the forum state where the cause of action accrued. Here the contract was allegedly breached in State X, and the allegedly tortious misrepresentation occurred in State X. Also, the accident occurred in State X. As with jurisdiction, the relevant time period for residency for purposes of venue is the time of filing. When the suit was filed, the only defendant, seller,was a resident of State X. Therefore, venue was proper in State X.

Seller may request transfer for forum non conveniens based on convenience of parties and witnesses. However, the argument for transfer would fail for several reasons. First, transfer can only be had to a venue where it would have been proper to file in the first place. At the time the suit was filed, seller, the only D, was not a State Y resident. The relevant transactions and occurrences, as explained above, all took place in State X, rather than Y. Therefore, the suit could not have been originally filed in State Y.

In addition, although buyer and seller are now both residents of State Y, most of the evidence and witnesses are in State X. The mechanic who allegedly inspected the car before the sale is located in X. The only witness, Friend, is a State X resident. Buyer was hospitalized in X, and therefore all witnesses and documentary evidence regarding medical evidence are located in X. Finally, the courts do afford weight to a plaintiff's choice of forum, which is X. Therefore, any motion to transfer for forum non conveniens should be denied as well.

02-05 MEE 3 Example 2

(1) The Court should not dismiss either claim for want of subject matter jurisdiction. At the time suit was filed, which is the time when diversity is determined, Buyer was domiciled/citizen of State Y and Seller was a citizen of State X. It makes no difference that during the litigation Seller moved to State Y. Diversity jurisdiction is not affected. The second prong of determining whether the district court has proper subject matter jurisdiction is the amount in controversy. Buyer's state law tort claim is clearly in excess of $75,000, the requisite amount in controversy for purposes of diversity jurisdiction. Buyer's contract claim, also a state claim, does not meet the requisite jurisdictional amount, however, as the claim stems from the same nucleus of operative fact, the court will likely exercise its supplemental jurisdiction & deny Seller's motion to dismiss.

(2) More than likely the Court will also deny Seller's motion for a change of venue. At the time the suit was initiated, State Y would not have had personal jurisdiction over Seller, and the action could not have been filed there. In order to grant a motion for a change of venue, the new forum must have jurisdiction. State Y would not have personal jurisdiction over Seller in either claim – the contract was executed in State X and the tort occurred in State X. Seller is not shown to have had any contacts with State Y before he moved there. As jurisdiction was not proper in State Y at the time the lawsuit was filed b/c no minimum contacts b/w Seller and State Y, the Court would deny Seller's motion for change of venue. Moreover, the accident and the witnesses thereto are located in State X, and the contract at issue was negotiated and executed in State X giving State X significant contacts and interest in handling the litigation.

02-05 MEE 3 Example 3

Answer to question 3

1) The court should not dismiss the tort or contract claims for lack of subject matter jurisdiction. At issue is whether diversity exists for subject matter jurisdiction.

Subject matter jurisdiction exists where there is a federal question or when there is complete diversity of the parties. The former is not applicable here. For diversity actions, the case in controversy must involve at least $75,000.

Here, the $75,000 requirement is met, as Buyer alleged damages for $500,000. This requirement merely must be reasonable, and it appears that $500,000 would be reasonable for someone who spent weeks in a hospital and couldn't work as a result. The fact that the contract claim was only $2500 is immaterial; the court will add the $2500 and the $500,000 together in considering the amount in controversy.

The parties must also be domiciled in different states. Domicile is based on an intent to remain somewhere indefinitely, as in where one would have a home and reside permanently. Here, both Buyer and Seller were citizens of State X at first, but then Buyer moved to State Y. The intent is measured at the time the action was commenced, i.e., when it was filed. Here, Buyer was in the process of moving to State Y when the tort occurred. At that time, his intent was to move permanently to State Y. Therefore, Buyer would be considered a State Y resident, and there would thus be complete diversity to sustain the diversity action.

2) The court should not allow the change of venue. A change of venue is possible if the action could have been brought originally in the transferee court. Because Buyer could not have brought the diversity action in the federal court in State Y, transfer of venue is not warranted.

Where the defendant is an individual, general venue rules apply. Venue is proper where the defendant resides, or where the tort occurred (if a tort claim is involved). The injury occurred in State X, and the breach of warranty also occurred in State X. Therefore, State X would have been the appropriate forum in which to bring a diversity action (between State Y Buyer and State X Seller).

That fact that Seller has changed his citizenship should not be affect this result, assuming it was done in good faith (and not in an attempt to destroy diversity). Again, the parties' domicile will be determined at the time the action was commenced. At that time, Seller was a citizen of State X, so diversity existed.

If Seller would then attempt to convince the court to exercise discretion in transferring by way of a forum non convienes. This would be for the convience of the parties, since both parties would then be in the same state. If granted, the federal court in State Y would apply the state law of State X (the state in which the transferor court sits) under the Erie doctrine.

02-05 MEE 5 Example 1

Wills

1. Generally it takes intent plus a physical act upon the wording of the will to revoke the Will. This is what occurred with the 1994 Will which testator ripped with the intent of revoking. Reading the applicable statute into this question we see an effective revocation of the 2nd Will (1994). Where there is no intent to the contrary, the prior 1991 Will is revived. When a Will is effectively revoked, all copies of the Will are revoked as well. If there were multiple Wills, the court would try as much as possible to read them in conjunction with each other and where inconsistent the later Will would take precedent. However, we don't have that issue here. With the 1991 Will revived there are several problems.

As to Cousin, there is the initial bequest of 10,000 which has been scratched out. Normally this would be enough to remove that gift from Cousin (revocation of that element). Here we have the hand written amendment altering the 10,000 to 100,000. Is this valid? Here we see State A doesn't allow holographic (handwritten) Wills and even if they did, it could not serve to revoke a typed Will. There are no witnesses to this 100,000 bequest. With these factors in mind, it would be enough to not allow the bequest (insufficient proof). However the Doctrine of Dependant Relative Revocation saves for Cousin. This doctrine says if reasonable to read the amendment as a mistake of fact or law that this form of amendment is allowed – benefit of doubt should go to testator that intent was to give something (if not more) to that person. Testator only scratched out old bequest because he thought new bequest was valid. So save the initial bequest (revive it) and give to Cousin under D.R.R. (intent of testator). Note – if the bequest written in was smaller than the initial bequest then Cousin would have received nothing.

Sister had a specific bequest in the 1991 Will granted to her. However, Blackacre was sold before testator died. When a specific bequest is no longer in the estate of the testator upon his death, it is said to be adeemed – meaning the bequest fails. It would go to the residuary. Sister could argue that "Blackacre, my family home" meant any family home, since testator did not simply say Blackacre. If she won that argument she would get Whiteacre – the new family home.

If not then Whiteacre would fail to the residue where it would go to University. Sister would get nothing. Cousin would get 10,000.

02-05 MEE 5 Example 2

What Cousin and Sister are entitled to depends on which Will, if any, is the valid Will. The facts state that both Wills were validly executed. A subsequent valid Will will invalidate a previous Will, so the 1994 Will invalidated the 1991 Will. However, the 1994 Will was revoked. A Will is revoked when the testator, or someone acting on his command commits a physical act that crosses the language of the Will, and the testator intended to revoke the Will. Here Testator tore up the 1994 Will, which qualifies as a physical act that crosses the language of the Will. He also seems to intend his act to be a revocation because afterwards he says Cousin is taken care of. This would imply that he intended the 1994 Will to be revoked and the 1991 Will to once again become effective.

Generally, revocation of a subsequent Will won't act to revive a prior Will. Rather, the testator becomes intestate. However, the statute in State A revives an earlier Will if a subsequent one is revoked, absent a contrary intent. Here, there doesn't appear to be a contrary intent because Testator's statement about Cousin implies he wants the 1991 Will to be effective again.

The last question about which Will will govern is the existence of the counterpart to the 1994 Will. Generally, revocation of one copy of a Will acts to revoke all copies of the Will. Thus, Testator tearing up and revoking one copy of the 1994 Will acts to revoke both copies of the 1994 Will. Since the 1994 Will has been revoked and the 1991 Will revived, the question is what are the terms of the Will.

To be effective, a Will must be by a testator at least 18, and in a writing signed by the testator. In addition, two witnesses must sign in the presence of the testator, at the testator's request, with the understanding they are signing a Will. Any codicils, or amendments to the Will must follow the same formalities. When Testator crossed out item 1, he revoked that part of the Will because a physical act crossed the language and he intended to revoke item 1 to change it. His handwritten bequest acts as a codicil, but it was not witnessed, and therefore is not valid. Thus, Cousin would get nothing because his original bequest was revoked and his subsequent bequest was invalid. However, the original bequest will be revived by Dependent Relative Revocation Rule. Dependant Relative Revocation says that if part of the Will would not have been revoked but for a mistake of law by the testator, the court has discretion to eliminate the revocation. Here, Testator wanted to give Cousin more, not less or nothing. Therefore it is clear that but for his mistaken belief that the handwritten codicil was valid, Testator would not have revoked Cousin's bequest. Therefore, Cousin will be entitled to $10,000.

Sister will probably get nothing. Her bequest seems to have been adeemed. Ademption occurs when property bequeathed in a Will is sold prior to the Testator's death. Since Blackacre has been sold, she will be a deemed. Sister could argue that it was a general legacy of a family home, and not subject to ademption. However, since Blackacre was named specifically, it will probably be regarded as a specific bequest.

02-05 MEE 5 Example 3

Cousin-will receive the $10,000 that was originally devised to him by the Will from 1991. According to the statute revocation of a Will that revoked an earlier Will revives the earlier Will in the absence of a contrary intention. In '99 when Testator tore up the Will from '94 in the presence of his neighbor and made the comment about Cousin being taken care of.

In MO: A Will is revived by destruction/revocation of a subsequent Will if the first Will is still in existence, and the subsequent Will was revoked by physical act, and it was Testators intent to revive it.
The tearing up of the '94 Will, while '91 Will is still there, and the statement witnessed by the neighbor evidences the revival of the '91 Will. In Missouri revocation of any copy of an executed Will revokes all copies. With the '91 Will revived, and provision that State A doesn't permit holographic Wills, the provision giving $100,000 to Cousin will be invalid (it would be anyway because it was not properly executed i.e. no 2 witnesses). However, because it was scratched out w/the intent to remove it there is now a blank devise. Here the court will use the doctrine of dependent relative revocation to establish that if not for the mistake of thinking that the new, more substantial devise would be effective, he (testator) would not have scratched out the original $10,000. Therefore the court will reinstate the $10,000 language and Cousin will take that.

Sister- Because of the reasons previously discussed the same rules apply and the '91 Will has been revived. Therefore Sister will take Whiteacre and any property passing intestate. Sister will take Whiteacre although the Will doesn't specifically provide for it because it is a fact of independent significance. The Will provides for Blackacre, the family home. When Blackacre was sold, Whiteacre became the new family home, so since this change was made not specifically to impact the Will, the Ct. will rule that the family home name is irrelevant, and whether it was the same family home was irrelevant. Thus Sister will still take the family home.

She will also take anything that passes intestate because MO follows per capita w/right of representation method of intestate succession, and if testator dies without a spouse or children; his parents & brothers & sisters take equally the entire intestate share. Here she is the only heir so she would take anything not in the residue.

02-05 MEE 6 Example 1

1. Sal has priority over Local Bank. Sal is a Secured Party. To be a Secured Party, one must attach and perfect their interest in the collateral. To attach, there must be an agreement, value must be given, and the debtor must have rights in the collateral. Sal's interest attached in the oven on either 3/1 or 3/14. On 3/1, Bill gave value ($8000 credit) and a security interest agreement was signed. On that date, the oven was tagged with a "Sold to Bill" sign. Some would argue that Bill had rights in the collateral then. However, it is more likely that Bill's rights to the oven did not happen until 3/14 when the oven was delivered. Therefore, Sal's security interest attached on 3/14. It is also important to note that Sal had a purchase money security interest (PMSI) in the oven because he extended credit to buy the specific oven he took a security interest in.

Sal perfected his security interest on 3/28 when he filed his financing statement. When Bill bought the oven, it was equipment. However, when it was bolted to the wall, it became a fixture. Financing statements for equipment are filed in the Sec. of State's Office while financing statements for fixtures are filed in the local real estate records office. At the time Sal took the security interest, it was equipment. However, by the time he filed, it was a fixture and should have been filed in the real estate office. The general rule is that if a financing statement is filed in the wrong place, it is invalid. However, there is a special exception for fixtures where a financing statement for fixtures in the wrong spot is ok & still beats out lien creditors for priority.

Local bank is a lien creditor and they perfected their lien on 3/26 when the sheriff levied.

The general rule in a priority fight between a Secured Party + a Lien Creditor is that the Secured Party wins if they filed first or perfected first. Although Local Bank perfected on 3/26 + Sal did not file/perfect until 3/28, Sal still wins b/c he fits within the 20 day PMSI grace exception. A PMSI Secured Party in equipment has 20 days extra time to perfect their lien. Sal perfecting on 3/28 was within the 20 grace period, so Sal beats out Local Bank in a priority fight.

2. FC wins in a priority fight w/Sal. This is a priority fight between two secured parties. As discussed above, Sal attached his security interest on 3/1 or 3/14. However, when he filed his financing statement in the wrong spot, he was not perfected against other secured parties. While a fixture filing filed in the wrong place is still ok to beat out lien creditors, it does not beat out other secured parties.

FC's lien attached + was perfected on 3/29 when they took a lien on the property + filed in the fixtures office. The general rule between 2 secured parties is that first to file or perfect has priority.

In this case, Sal's filing/perfection was incomplete b/c he filed in the wrong office. Therefore, FC filed + perfected first on 3/29 and has priority.

02-05 MEE6 Example 2

Question 6 - Secured Transactions

1. As between Sal's and Local Bank, Sal's has priority to the oven. At issue here is the priority between a judgment lien holder and a perfected PMSI in equipment. Sal's interest in the oven attached when Bill signed the security agreement. Further PMSI in equipment has 20 days from the moment that debtor takes possession to file in order to perfect. Bill took delivery on March 14th and Sal's filed on March 28th within the period of time required for perfection in PMSI & in equipment. A PMSI has a higher priority than a judgment lien holder under Article 9 of the UCC which governs secured transactions. Although the judgment lien holder would ordinarily fall under the "first to file category" versus a general perfected interest, a PMSI has superpriority over other claimants & thereby Sal's would still retain a greater interest than Bank.

2. As between Sal's and Finance Company, Finance Company would have a greater priority in the oven even though it perfected subsequent to Sal's filing. At issue here is the priority of a PMSI who has not filed a "fixture filing" & a perfected party who has an interest in the fixtures by proper fixture filing as well as on the attached real property. Since the oven has now become affixed, the fixture filing has a higher priority than a PMSI without a fixture filing.
***Note: In the unlikely event that the bolting does not constitute enough affixation for the oven to be considered a fixture, then Sal's interests would once again have priority over Finance.

02-05 MEE 6 Example 3

(1) Sal's will have priority over local bank. At issue is the priority between a properly perfected secured party and a lien creditor. This deals with security interests, thus Article 9 of the UCC applies.

In order to have a properly perfected security interest, there must be: (1) attachment, and (2) perfection. Attachment occurs when: (1) there is an agreement between the secured party and the debtor to form a security interest (e.g., signed security agreement, possession); (2) the debtor has rights in the collateral; (3) and the secured party gives value.

In this case, Sal's had Bill sign a security agreement on March 1. Bill gained rights in the collateral on March 14, when the oven was delivered to him (note he did not have rights on March 1 when he signed the agreement) and Sal's gave value by giving him the oven on credit. As such, this was a Purchase Money Security Interest (PMSI), because the $8000 was specifically the money to purchase the oven.

Sal's perfected the security interest also. A security interest is perfected when the secured party files a financing statement w/the proper office (usually the Secretary of State). A PMSI will be automatically perfected for 20 days. At the end of those 20 days, though, the Secured Party must file a financing statement or it becomes imperfected. The 20 days run from the date of delivery.

Here, it is a PMSI. The 20 days start to run March 14, Sal's filed the financing statement on March 28, which is less than 20 days from March 14. Thus Sal's was properly perfected.

A properly perfected secured party has priority over a lien creditor if the secured party files or perfects before the lien creditor attempts to execute the levy. Here, Sal's was perfected effective March 14 and remained perfected. Thus, the attempt by Local Bank to execute a levy on the oven on March 26 must fail, as Sal's has priority in this particular collateral.

(The fact that Sal's didn't do a fixture filing is immaterial in regard to Local Bank. See infra at (2).)

(2) Finance Company has priority in the oven over Sal's. At issue is priority between a properly perfected secured party and a mortgagee.

As to Finance Company, a mortgagee, the oven is a fixture. A fixture is a good that becomes affixed to the land in such a way that it cannot be severed from the land without material harm to the land, and is not typically removed from the land.

To perfect a security interest in collateral that could be considered a fixture, a secured party must file a fixture filing in the proper office (usually the county recorder of deeds). In this case, Sal's did not file a fixture filing w/the local real estate records office. Thus, Sal's security interest in the oven was imperfected as to a recorded mortgagor, and Sal's will not have priority over Finance Company with regards to the oven.

02-05 MEE 7 Example 1

1. In order for Ruth's acts to bind Scott, Ruth must either have had actual or apparent authority or there must have been ratification by the principal. Actual authority is the authority granted by the agreement existing between the principal and the agent. It can either be express or implied. Here, there is neither express or implied authority for Ruth to enter into contracts with wholesale. In fact, Ruth has breached her duty to be obedient to the reasonable instructions of the principal. Scott is not liable to Wholesale based on actual authority.

Whether Ruth had apparent authority is a closer question. Apparent authority arises out of the principal's relationship with third parties. If the principal has held the agent out to third parties as being a person who has authority to bind the agent, the agent will be bound.

Here, Scott did not do any affirmative "holding out" of Ruth as his agent. However, Scott was aware that Ruth had been managing the Restaurant and dealing with suppliers for change and he took no steps to inform those suppliers of his relationship with Ruth. Thus, when Ruth did business with those suppliers, she was "cloaked in the appearance of authority" and it was reasonable of the parties to rely on her representations. On these facts, a court may find Scott is liable to Wholesale.

Because Scott fired Ruth when he found out what she was doing, no ratification has occurred.

2. Again, it is clear that Ruth did not have actual authority to sign a 20 year contract with Nora because under the partnership agreement Ruth was only allowed to hire employees for at will employment.Ruth had actual authority to hire such employees. Ruth was again in breach of her duty of obedience.

Here, there was no holding out to third parties that would give Ruth apparent authority. Ruth had not been in the habit of signing 20 year employment contracts and such agreements are very uncommon in the restaurant industry. It was not reasonable for Nora to rely on Ruth's ability to enter into such a contract. Scott will not be liable to Nora for breach of the employment contract because Ruth had no actual or apparent authority to enter into the contract and Scott has not ratified the contract.

02-05 MEE 7 Example 2

(1) Scott will be liable on the contract with Wholesale. At issue is the liability of a principal for the contacts entered into by agents.

Scott and Ruth had a principal-agent relationship. Scott, as owner of the business, hired Ruth, and gave her certain responsibilities as part of her job. This made her his agent.

Generally, a principal will be liable for contracts entered into by agents where the agent has authority. Authority can be actual authority or apparent authority. Actual authority can be express or implied. Express authority exists when the principal has expressly authorized an agent to enter into a contract. Implied authority exists when the agent reasonably believes that she has the authority to act, or when authority to act is a direct and natural outgrowth of the agent's position.

In this case, Ruth did not have express authority to enter into the contract with Wholesale. Scott had told her not to. She did not have implied authority either. Since Scott had told her not to order from Wholesale, she could not have reasonably believed she could do so. Also, while restaurant manager should ordinarily have the ability to order restaurant supplies be a natural out growth of her position, here that is not the case because Scott expressly told her not to.

An agent can act with apparent authority, even where they lack actual authority. To have apparent authority, the principal must have done something to cloak the agent with the appearance of authority, and a 3rd party must have acted in reliance on this appearance of authority.

Here, Scott cloaked Ruth w/the appearance of authority by keeping the name "Ruth's Family Restaurant" and keeping all necessary licenses in her name. He also allowed her to keep signing invoices "Ruth, d/b/a Ruth's Family Restaurant." Thus, he gave the appearance that Ruth had authority to act.

Moreover, Wholesale reasonably relied on this appearance of authority. If Scott was so concerned about Ruth's buying from Wholesale, he should have sent Wholesale a letter informing them that Ruth lacked authority to act on behalf of Scott in dealings w/Wholesale.

As Scott gave Ruth the apparent authority to act, Scott will be liable to Wholesale.

(2) Scott is not liable on the contract with Nora. At issue is when it is reasonable for a 3rd party to rely on an agent's apparent authority.

While Scott gave Ruth express authority to hire employees, he limited Ruth to hiring employees "at will." A principal may limit an agent's actual authority with a limiting instruction, and the principal will not be liable for the agent's acts inconsistent w/these instructions. Here, because of the limiting instruction only to hire at will employees, Ruth cannot be said to have actual authority, either express or implied.

Moreover, Ruth cannot be said to have apparent authority. While Scott may have "cloaked" her with the appearance of authority by putting her in charge of hiring employees, it cannot be said that Nora's reliance on this authority was reasonable.

Nora should have known that it was unreasonable to offer 20-year contracts in the restaurant business. The facts state that "at will" contracts are customary in that business. Because of the extreme variance between a 20-year contract & an at will contract, Nora cannot be said to have reasonably relied on Ruth's appearance of authority to make such a contract.

As neither actual nor apparent authority existed for Ruth's contract w/Nora, Scott won't be liable.

02-05 MEE 7 Example 3

Answer to question 7

1. Yes, Scott is liable to Wholesale for Ruth's action under agency law. A principal (even if undisclosed) is liable for the contracts of their agents who have authority to act. Agents can gain authority in three ways: (i) actual, (ii) apparent, and (iii) ratificaiton. An agent's actual authority comes from those communications between the principal and agent. Apparent authority comes about by communicaitons between the principal and third parties. And, ratification authority results when the principal accepts the benefits of unauthorized activity of an agent. Authority, once given can be freely revoked by the principal. However, when it comes to apparent authority some notice must be given to third parties. For third parties in general, publication notice is enough. For third party creditors, however, personal notice is required. Under these fact, Ruth lack actual authority, becasue Scott told her specifically not to do what was done. And, although there was no actual apparent authority (i.e. Scott did not directly authorize Ruth's actions by communicating to Wholesale), there was an implied apparent authority that remained from when Ruth had dealt with Wholesale in the past, and Scott knew of these dealing and failed to supply personal notice of Ruth's revocation of authority to deal with Wholesale. Therefore, because Ruth had apparent authority to act as Scott's agent, he will be bound to Wholesale for the supplies purchased.

2. No, Scott is not liable to Nora on the employment contract. Again, principals are only liable for their agents activities that are authorized. Ruth's authority is again the focal issue. There is no actual authority. Ruth was to only hire "at-will" employees. There was no apparent authority. Scott was an undisclosed principal. As such, there was no communication (actual or implied) between Scott and Nora. The only possible claim Nora can make is for ratification. If there has been enough time pass between Nora's hiring and Scott's knowledge of that hiring (including the terms) then it could be claimed that Scott ratified Ruth's actions. That does not appear to be the case. The fact indicate, "[w]hen Scott discovered what Ruth had done," that he took quick action to remove both Ruth and Nora, and therefore Scott did not ratify Ruth's actions.